

**ASSEMBLY BILL**

**No. 2247**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 24, 2012

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An act to amend Sections 640 and 830.14 of the Penal Code, and to amend Section 99580 of the Public Utilities Code, relating to public transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2247, as introduced, Bonnie Lowenthal. Public transportation: offenses.

(1) Existing law provides that evasion of the fare on a public transportation system is an infraction for the first or 2nd violation, punishable by a fine not to exceed \$250 and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment, and is a misdemeanor for the 3rd or subsequent violation, punishable by a fine of not more than \$400 or by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment. Specified public transportation agencies, including, but not limited to, the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority are authorized to enact and enforce ordinances providing that a person who is the subject of a citation for any of the acts described, such as fare evasion, on or in a facility or vehicle of the system for which the public transportation system has jurisdiction shall, under the circumstances set forth by the ordinance, be afforded an opportunity to complete an administrative process that imposes only an administrative penalty enforced in a civil proceeding.

This bill would make the above penalties and administrative process applicable to the sale or peddling of any goods, merchandise, property, or services of any kind on the facilities, vehicles, or property of the public transportation system, without the express written consent of the public transportation system or its duly authorized representative. Because this bill would create a new crime, the bill would impose a state-mandated local program.

(2) The bill would also make conforming changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 640 of the Penal Code is amended to  
2 read:  
3 640. (a) (1) Any of the acts described in paragraphs (1) to (5),  
4 inclusive, of subdivision (b) is an infraction punishable by a fine  
5 not to exceed two hundred fifty dollars (\$250) and by community  
6 service for a total time not to exceed 48 hours over a period not to  
7 exceed 30 days, during a time other than during the violator's hours  
8 of school attendance or employment. Any of the acts described in  
9 ~~paragraphs (1) to (3), inclusive, of subdivision (e)~~ subdivisions (c)  
10 ~~and (e)~~, upon a first or second violation, is an infraction punishable  
11 by a fine not to exceed two hundred fifty dollars (\$250) and by  
12 community service for a total time not to exceed 48 hours over a  
13 period not to exceed 30 days, during a time other than during the  
14 violator's hours of school attendance or employment. A third or  
15 subsequent violation of any of the acts described in ~~paragraphs (1)~~  
16 ~~to (3), inclusive, of subdivision (e)~~ subdivisions (c) and (e) is a  
17 misdemeanor punishable by a fine of not more than four hundred  
18 dollars (\$400) or by imprisonment in a county jail for a period of  
19 not more than 90 days, or by both that fine and imprisonment. Any  
20 of the acts described in subdivision (d) shall be punishable by a  
21 fine of not more than four hundred dollars (\$400), by imprisonment

1 in a county jail for a period of not more than 90 days, or by both  
2 that fine and imprisonment.

3 (2) This section shall apply only to acts committed on or in a  
4 facility or vehicle of a public transportation system.

5 (b) (1) Eating or drinking in or on a system facility or vehicle  
6 in areas where those activities are prohibited by that system.

7 (2) Disturbing another person by loud or unreasonable noise.

8 (3) Smoking in or on a system facility or vehicle in areas where  
9 those activities are prohibited by that system.

10 (4) Expectorating upon a system facility or vehicle.

11 (5) Skateboarding, roller skating, bicycle riding, roller blading,  
12 or operating a motorized scooter or similar device, as defined in  
13 Section 407.5 of the Vehicle Code in a system facility, vehicle, or  
14 parking structure. This paragraph does not apply to an activity that  
15 is necessary for utilization of the transit facility by a bicyclist,  
16 including, but not limited to, an activity that is necessary for  
17 parking a bicycle or transporting a bicycle aboard a transit vehicle,  
18 if that activity is conducted with the permission of the transit  
19 agency in a manner that does not interfere with the safety of the  
20 bicyclist or other patrons of the transit facility.

21 (c) (1) Evasion of the payment of a fare of the system. For  
22 purposes of this section, fare evasion includes entering an enclosed  
23 area of a public transit facility beyond posted signs prohibiting  
24 entrance without obtaining valid fare, in addition to entering a  
25 transit vehicle without valid fare.

26 (2) Misuse of a transfer, pass, ticket, or token with the intent to  
27 evade the payment of a fare.

28 (3) (A) Unauthorized use of a discount ticket or failure to  
29 present, upon request from a transit system representative,  
30 acceptable proof of eligibility to use a discount ticket, in  
31 accordance with Section 99155 of the Public Utilities Code and  
32 posted system identification policies when entering or exiting a  
33 transit station or vehicle. Acceptable proof of eligibility must be  
34 clearly defined in the posting.

35 (B) In the event that an eligible discount ticket user is not in  
36 possession of acceptable proof at the time of request, any citation  
37 issued shall be held for a period of 72 hours to allow the user to  
38 produce acceptable proof. If the proof is provided, the citation  
39 shall be voided. If the proof is not produced within that time period,  
40 the citation shall be processed.

(d) (1) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(2) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle.

(3) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(4) Willfully blocking the free movement of another person in a system facility or vehicle. This paragraph shall not be interpreted to affect any lawful activities permitted or First Amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(5) Willfully tampering with, removing, displacing, injuring, or destroying any part of any facility or vehicle of a public transportation system.

*(e) Sale or peddling of any goods, merchandise, property, or services of any kind whatsoever on the facilities, vehicles, or property of the public transportation system without the express written consent of the public transportation system or its duly authorized representatives.*

~~(e)~~

(f) Notwithstanding subdivision (a), the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Southern California Regional Rail Authority, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, the North County Transit District, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance providing that a person who is the subject of a citation for any of the acts described in subdivision (b)~~–or~~, (c), *or (e)* on or in a facility or vehicle described in subdivision (a) for which the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Southern California Regional Rail Authority, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, the North County Transit District, or the Alameda-Contra Costa Transit District has jurisdiction shall, under the circumstances set forth by the ordinance, be afforded an

1 opportunity to complete an administrative process that imposes  
2 only an administrative penalty enforced in a civil proceeding. The  
3 ordinance for imposing and enforcing the administrative penalty  
4 shall be governed by Chapter 8 (commencing with Section 99580)  
5 of Part 11 of Division 10 of the Public Utilities Code and shall not  
6 apply to minors.

7 ~~(f)~~

8 (g) For purposes of this section, a “facility or vehicle of a public  
9 transportation system” means any of the following:

10 (1) A facility or vehicle of a public transportation system as  
11 defined by Section 99211 of the Public Utilities Code.

12 (2) A facility of, or vehicle operated by any entity subsidized  
13 by, the Department of Transportation.

14 (3) A facility or vehicle of the Southern California Regional  
15 Rail Authority, whether owned or leased.

16 (4) A leased or rented facility or vehicle for which any of the  
17 entities described in paragraph (1), (2), or (3) incurs costs of  
18 cleanup, repair, or replacement as a result of any of those acts.

19 SEC. 2. Section 830.14 of the Penal Code is amended to read:

20 830.14. (a) A local or regional transit agency or a joint powers  
21 agency operating rail service identified in an implementation  
22 program adopted pursuant to Article 10 (commencing with Section  
23 130450) of Chapter 4 of Division 12 of the Public Utilities Code  
24 may authorize by contract designated persons as conductors  
25 performing fare inspection duties who are employed by a railroad  
26 corporation that operates public rail commuter transit services for  
27 that agency to act as its agent in the enforcement of subdivisions  
28 (a) to ~~(d)~~ (e), inclusive, of Section 640 relating to the operation of  
29 the rail service if they complete the training requirement specified  
30 in this section.

31 (b) The governing board of the Altamont Commuter Express  
32 Authority, a joint powers agency duly formed pursuant to Article  
33 1 (commencing with Section 6500) of Chapter 5 of Division 7 of  
34 Title 1 of the Government Code, by and between the Alameda  
35 Congestion Management Agency, the Santa Clara County Transit  
36 District, and the San Joaquin Regional Rail Commission, may  
37 contract with designated persons to act as its agents in the  
38 enforcement of subdivisions (a) to ~~(d)~~ (e), inclusive, of Section  
39 640 relating to the operation of a public transportation system if

1 these persons complete the training requirement specified in this  
2 section.

3 (c) The governing board of the Peninsula Corridor Joint Powers  
4 Board, a joint powers agency duly formed pursuant to Article 1  
5 (commencing with Section 6500) of Chapter 5 of Division 7 of  
6 Title 1 of the Government Code, by and between the San Mateo  
7 County Transit District, the Santa Clara County Transit District,  
8 and the City and County of San Francisco, may appoint designated  
9 persons to act as its agents in the enforcement of subdivisions (a)  
10 to-~~(d)~~ (e), inclusive, of Section 640 relating to the operation of a  
11 public transportation system if these persons complete the training  
12 requirement specified in this section.

13 (d) The governing board of Foothill Transit, a joint powers  
14 agency duly formed pursuant to Article 1 (commencing with  
15 Section 6500) of Chapter 5 of Division 7 of Title 1 of the  
16 Government Code, by and between the Cities of Arcadia, Azusa,  
17 Baldwin Park, Bradbury, Claremont, Covina, Diamond Bar, Duarte,  
18 El Monte, Glendora, Industry, Irwindale, La Habra Heights, La  
19 Puente, La Verne, Monrovia, Pomona, San Dimas, South El Monte,  
20 Temple City, Walnut, West Covina, and the County of Los  
21 Angeles, may resolve to contract with designated persons to act  
22 as its agents in the enforcement of subdivisions (a) to-~~(d)~~ (e),  
23 inclusive, of Section 640 relating to the operation of a public  
24 transportation system if these persons complete the training  
25 requirement specified in this section.

26 (e) The governing board of the Sacramento Regional Transit  
27 District, a transit district duly formed pursuant to Part 14  
28 (commencing with Section 102000) of Division 10 of the Public  
29 Utilities Code, may designate persons regularly employed by the  
30 district as inspectors or supervisors to enforce subdivisions (a) to  
31 ~~(d)~~ (e), inclusive, of Section 640, relating to the operation of a  
32 public transportation system, and any ordinance adopted by the  
33 district pursuant to subdivision (a) of Section 102122 of the Public  
34 Utilities Code, if these persons complete the training requirement  
35 specified in this section.

36 (f) Persons authorized pursuant to this section to enforce  
37 subdivisions (a) to-~~(d)~~ (e), inclusive, of Section 640 shall complete  
38 a specialized fare compliance course-~~which~~ *that* shall be provided  
39 by the authorizing agency. This training course shall include, but  
40 not be limited to, the following topics:

- 1 (1) An overview of barrier-free fare inspection concepts.
- 2 (2) The scope and limitations of inspector authority.
- 3 (3) Familiarization with the elements of the infractions
- 4 enumerated in subdivisions (a) to ~~(d)~~ (e), inclusive, of Section 640.
- 5 (4) Techniques for conducting fare checks, including inspection
- 6 procedures, demeanor, and contacting violators.
- 7 (5) Citation issuance and court appearances.
- 8 (6) Fare media recognition.
- 9 (7) Handling argumentative violators and diffusing conflict.
- 10 (8) The mechanics of law enforcement support and interacting
- 11 with law enforcement for effective incident resolution.
- 12 (g) Persons described in this section are public officers, not
- 13 peace officers, have no authority to carry firearms or any other
- 14 weapon while performing the duties authorized in this section, and
- 15 may not exercise the powers of arrest of a peace officer while
- 16 performing the duties authorized in this section. These persons
- 17 may be authorized by the agencies specified in this section to issue
- 18 citations involving infractions relating to the operation of the rail
- 19 service specified in this section.
- 20 (h) Nothing in this section shall affect the retirement or disability
- 21 benefits provided to employees described in this section or be in
- 22 violation of any collective bargaining agreement between a labor
- 23 organization and a railroad corporation.
- 24 (i) Notwithstanding any other provision of this section, the
- 25 primary responsibility of a conductor of a commuter passenger
- 26 train shall be functions related to safe train operation.
- 27 SEC. 3. Section 99580 of the Public Utilities Code is amended
- 28 to read:
- 29 99580. (a) Pursuant to ~~paragraph (1) of subdivision (e)~~ (f) of
- 30 Section 640 of the Penal Code, the City and County of San
- 31 Francisco, the Los Angeles County Metropolitan Transportation
- 32 Authority, the Southern California Regional Rail Authority, the
- 33 Santa Clara Valley Transportation Authority, the Sacramento
- 34 Regional Transit District, Long Beach Transit, Foothill Transit,
- 35 the North County Transit District, and the Alameda-Contra Costa
- 36 Transit District may enact and enforce an ordinance to impose and
- 37 enforce an administrative penalty for any of the acts described in
- 38 subdivision (b). The ordinance shall include the provisions of this
- 39 chapter and shall not apply to minors.
- 40 (b) (1) Evasion of the payment of a fare of the system.

1 (2) Misuse of a transfer, pass, ticket, or token with the intent to  
2 evade the payment of a fare.

3 (3) Playing sound equipment on or in a system facility or  
4 vehicle.

5 (4) Smoking, eating, or drinking in or on a system facility or  
6 vehicle in those areas where those activities are prohibited by that  
7 system.

8 (5) Expecterating upon a system facility or vehicle.

9 (6) Willfully disturbing others on or in a system facility or  
10 vehicle by engaging in boisterous or unruly behavior.

11 (7) Carrying an explosive or acid, flammable liquid, or toxic or  
12 hazardous material in a system facility or vehicle.

13 (8) Urinating or defecating in a system facility or vehicle, except  
14 in a lavatory. However, this paragraph shall not apply to a person  
15 who cannot comply with this paragraph as a result of a disability,  
16 age, or a medical condition.

17 (9) (A) Willfully blocking the free movement of another person  
18 in a system facility or vehicle.

19 (B) This paragraph shall not be interpreted to affect any lawful  
20 activities permitted or first amendment rights protected under the  
21 laws of this state or applicable federal law, including, but not  
22 limited to, laws related to collective bargaining, labor relations,  
23 or labor disputes.

24 (10) Skateboarding, roller skating, bicycle riding, or roller  
25 blading in a system facility, including a parking structure, or in a  
26 system vehicle. This paragraph does not apply to an activity that  
27 is necessary for utilization of a system facility by a bicyclist,  
28 including, but not limited to, an activity that is necessary for  
29 parking a bicycle or transporting a bicycle aboard a system vehicle,  
30 if that activity is conducted with the permission of the agency of  
31 the system in a manner that does not interfere with the safety of  
32 the bicyclist or other patrons of the system facility.

33 (11) (A) Unauthorized use of a discount ticket or failure to  
34 present, upon request from a system representative, acceptable  
35 proof of eligibility to use a discount ticket, in accordance with  
36 Section 99155, and posted system identification policies when  
37 entering or exiting a system station or vehicle. Acceptable proof  
38 of eligibility must be clearly defined in the posting.

39 (B) In the event that an eligible discount ticket user is not in  
40 possession of acceptable proof at the time of request, an issued



1 notice of fare evasion or passenger conduct violation shall be held  
2 for a period of 72 hours to allow the user to produce acceptable  
3 proof. If the proof is provided, that notice shall be voided. If the  
4 proof is not produced within that time period, that notice shall be  
5 processed.

6 *(12) Sale or peddling of any goods, merchandise, property, or*  
7 *services of any kind whatsoever on the facilities, vehicles, or*  
8 *property of the public transportation system without the express*  
9 *written consent of the public transportation system or its duly*  
10 *authorized representatives.*

11 (c) (1) The City and County of San Francisco, the Los Angeles  
12 County Metropolitan Transportation Authority, the Santa Clara  
13 Valley Transportation Authority, the Sacramento Regional Transit  
14 District, the Southern California Regional Rail Authority, Long  
15 Beach Transit, Foothill Transit, the North County Transit District,  
16 and the Alameda-Contra Costa Transit District may contract with  
17 a private vendor or governmental agency for the processing of  
18 notices of fare evasion or passenger conduct violation, and notices  
19 of delinquent fare evasion or passenger conduct violation pursuant  
20 to Section 99581.

21 (2) For the purpose of this chapter, “processing agency” means  
22 either of the following:

23 (A) The agency issuing the notice of fare evasion or passenger  
24 conduct violation and the notice of delinquent fare evasion or  
25 passenger conduct violation.

26 (B) The party responsible for processing the notice of fare  
27 evasion or passenger conduct violation and the notice of delinquent  
28 violation, if a contract is entered into pursuant to paragraph (1).

29 (3) For the purpose of this chapter, “fare evasion or passenger  
30 conduct violation penalty” includes, but is not limited to, a late  
31 payment penalty, administrative fee, fine, assessment, and costs  
32 of collection as provided for in the ordinance.

33 (4) All fare evasion and passenger conduct violation penalties  
34 collected by the processing agency in the City and County of San  
35 Francisco shall be deposited to the general fund of the City and  
36 County of San Francisco.

37 (5) All fare evasion and passenger conduct violation penalties  
38 collected by the Long Beach Transit or Foothill Transit shall be  
39 deposited in the general fund of the County of Los Angeles.

1 (6) All fare evasion and passenger conduct violation penalties  
2 collected by the Los Angeles County Metropolitan Transportation  
3 Authority shall be deposited in the general fund of the county in  
4 which the citation is administered.

5 (7) All fare evasion and passenger conduct violation penalties  
6 collected by the Santa Clara Valley Transportation Authority shall  
7 be deposited in the general fund of the County of Santa Clara.

8 (8) All fare evasion and passenger conduct violation penalties  
9 collected by the Sacramento Regional Transit District shall be  
10 deposited in the general fund of the County of Sacramento.

11 (9) All fare evasion and passenger conduct violation penalties  
12 collected by the Alameda-Contra Costa Transit District shall be  
13 deposited in the general fund of the county in which the citation  
14 is administered.

15 (10) All fare evasion and passenger conduct violation penalties  
16 collected by the Southern California Regional Rail Authority shall  
17 be deposited in the general fund of the county in which the citation  
18 is administered.

19 (11) All fare evasion and passenger conduct violation penalties  
20 collected by the North County Transit District shall be deposited  
21 in the general fund of the County of San Diego.

22 (d) (1) If a fare evasion or passenger conduct violation is  
23 observed by a person authorized to enforce the ordinance, a notice  
24 of fare evasion or passenger conduct violation shall be issued. The  
25 notice shall set forth the violation, including reference to the  
26 ordinance setting forth the administrative penalty, the date of the  
27 violation, the approximate time, and the location where the  
28 violation occurred. The notice shall include a printed statement  
29 indicating the date payment is required to be made, and the  
30 procedure for contesting the notice. The notice shall be served by  
31 personal service upon the violator. The notice, or copy of the  
32 notice, shall be considered a record kept in the ordinary course of  
33 business of the issuing agency and the processing agency, and  
34 shall be prima facie evidence of the facts contained in the notice  
35 establishing a rebuttable presumption affecting the burden of  
36 producing evidence.

37 (2) When a notice of fare evasion or passenger conduct violation  
38 has been served, the person issuing the notice shall file the notice  
39 with the processing agency.

1 (3) If a person contests a notice of fare evasion or passenger  
2 conduct violation, the issuing agency shall proceed in accordance  
3 with Section 99581.

4 (e) In setting the amounts of administrative penalties for the  
5 violations listed in subdivision (b), the City and County of San  
6 Francisco, the Los Angeles County Metropolitan Transportation  
7 Authority, the Santa Clara Valley Transportation Authority, the  
8 Sacramento Regional Transit District, the Southern California  
9 Regional Rail Authority, Long Beach Transit, Foothill Transit, the  
10 North County Transit District, and the Alameda-Contra Costa  
11 Transit District shall not establish penalty amounts that exceed the  
12 maximum fine amount set forth in Section 640 of the Penal Code.

13 (f) A person who receives a notice of fare evasion or passenger  
14 conduct violation pursuant to this section shall not be subject to  
15 citation for a violation of Section 640 of the Penal Code.

16 (g) If an entity enacts an ordinance pursuant to this section it  
17 shall, both two years and five years after enactment of the  
18 ordinance, report all of the following information to the Senate  
19 Committee on Transportation and Housing and the Assembly  
20 Committee on Transportation:

21 (1) A description of the ordinance, including the circumstances  
22 under which an alleged violator is afforded the opportunity to  
23 complete the administrative process.

24 (2) The amount of the administrative penalties.

25 (3) The number and types of citations administered pursuant to  
26 the ordinance.

27 (4) To the extent available, a comparison of the number and  
28 types of citations administered pursuant to the ordinance with the  
29 number and types of citations issued for similar offenses and  
30 administered through the courts both in the two years prior to the  
31 ordinance and, if any, since enactment of the ordinance.

32 (5) A discussion of the effect of the ordinance on passenger  
33 behavior.

34 (6) A discussion of the effect of the ordinance on revenues to  
35 the entity described in subdivision (a) and, in consultation with  
36 the superior courts, the cost savings to the county courts. The  
37 superior courts are encouraged to collaborate on and provide data  
38 for this report.

39 SEC. 4. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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